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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/506,032 07/24/95 FOREST

26M2/0322

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D

EXAMINER

WELDON, U

ART UNIT

PAPER NUMBER

2609

DATE MAILED:

03/22/96

 This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined    ☐ Responsive to communication filed on \_\_\_\_\_    ☐ This action is made final.

 A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133
**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.  | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.                  |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-89 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-89 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I (selection means only responsive to plural intersection periods. e.g. claims 3, 7, 59, 60, 70); Species II (selection means involve with clipping, distance between locations, e.g. claims 17, 19-32, 61, 62, 84); Species III (selection means coupled to fatigue detector, e.g. claim 18); Species IV (control means with muscle sensor, e.g. 82, 83, 89); Species V (claims such as 63-66 are directed to confiner); Species VI (claims such as 73 and 80 are directed to a speech synthesis); Species VII (claims such as 87 and 88 are directed to sensors' signal levels); Species IIX (claims such as 33-38 and 69 are directed to submenus); Species IX (selection depends on a dwell which depends on first and second selectable regions, e.g. 8-13, 16, 54-58); Species X (device controller-see claims 74, 75); Species XI (remaining dwell time-see claim 14); Species XII (tactile indication - see claim 15); Species XIII (virtual regions - see claims 4 and 78); Species XIV (editing means - see claims 76, 77); Species XV (selection means is partially disabled - see claims 47, 48). Claim 6 cannot be positively correlated with any one species.

Species, while usually independent may be related under the particular disclosure (see MPEP 806.04(c)).

Claims are definitions of inventions. Claims are never species. Species are always the specifically different embodiments. See MPEP 806.04(e).

For election of species purposes, it is not necessary to show a separate status in the art or separate classification (see MPEP 808.01(a)).

In an election requirement (MPEP 809.02a), the species can be identified as examples or in the absence of clear examples by grouping of claims. A combination of the grouping of claims and examples has been used above to identify at least 15 species.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 5, 39-46, 49-51, 52-53, 67-68, 71, 72, 81, and 85 appear to be generic. These claims appear to be readable on the same embodiment (see MPEP 806.04d).

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R.

Serial Number: 08/506,032  
Art Unit: 2609

-4-

§ 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P.

§ 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

2. A telephone call was made to Mr. D. K. Forest on March 21, 1996 to request an oral election to the above restriction requirement, but did not result in an election being made.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to U. Weldon whose telephone number is (703) 305-4389. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (703) 305-4709. The fax phone number for this Group is (703) 305-9508.

Serial Number: 08/506,032  
Art Unit: 2609

-5-

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

U. Weldon/skf  
March 21, 1996

*Ulysses Weldon*  
ULYSSES WELDON  
PRIMARY EXAMINER  
GROUP 2600